his credit good ; his promise to pay at a future day involving an engagement on his part that he will remain, and then be, able to pay, which engagement is broken when he becomes insolvent and unable to pay, and the right of the vendor to stop performance of the contract on his part. Nor is the rule varied by the fact that the vendee has given a note or bill for the price, payable when the credit expires." The insolvency of the vendee is sufficient to justify the vendor for refusing to continue the delivery unless the payment be made in cash. (*Mining Co.* v. *Brown*, 124 U. S. 385.) Even admitting the right to refuse delivery, however, it was contended that the vendor was obliged to keep the property ready for delivery until the time of credit expired, and that a re-sale prior to that time would be a breach of the contract. The court denies this, saying : "The right of the vendee is to receive the goods at the time the vendor contracts to deliver them. * * * The breach therefore, if there be one, consists in his failure to deliver the goods according to the contract, and occurs at that time and not upon a sale subsequently made ; the vendee's cause of action arises, if at all, upon the failure to deliver and not on the re-sale. * * * The right of re-sale grows out of the failure of the vendee to keep his engagement. Not that the contract is thereby rescinded, for that would defeat the vendor's remedy for damages upon resale after due notice, but that he may elect to treat the agreement for the credit as at an end, on account of the vendee's default."

Principal and Surety — Discharge of Surety.— Saint v. *Wheeler & Wilson Manufg. Co.*, 10 South. Rep. 539 (Ala). In this case a bond was executed by Saint, as principal, and four others, as sureties, for the faithful performance by Saint of the duties of a collector. Certain funds collected were retained or embezzled by him, and action was brought against him and his sureties to recover the amount so embezzled. The evidence showed that Saint was required to sell and discount notes and to take up and re-sell sewing machines, exercising his discretion, in addition to his work as a collector, which his sureties claimed increased the risk. On this point the Court held that Saint's sureties were sureties for his honesty, and that no modification of his duties could affect their liability or save them from making good his defaults, unless the imposition of such new duties or their performance rendered impossible, or materially hindered or impeded, the proper performance of the service originally undertaken. On the other hand it appears that Walls, an agent of the company having gen-

eral supervision over Saint, knowing of Saint's defalcation, did not give notice to his sureties, but continued him in the service of the company, entrusted more funds to his hands and extended time of payment. After criticizing a number of cases to the effect that the failure of one officer or agent of a corporation to give notice of another agent's dishonesty to the sureties of such agent, does not release such sureties, the Court said: "No doctrine of the law is more familiar than that notice to an agent, within the scope of his agency, is notice to the principal; and the doctrine has in no connection been applied more frequently and uniformly than to corporations and their agents. Indeed there is an absolute necessity in all cases for its application to corporations, since they act and can be dealt with only through agents. * * * If Walls, while acting for the corporation and in the capacity of its agent with respect to the matters and things involved in Saint's contract, received notice of such a conversion of its funds as amounted to embezzlement or involved dishonesty, and without imparting this knowledge to the sureties and receiving their assent thereto, continued him in the service, the sureties are not liable for Saint's subsequent defaults."

Recission of Deed — Fraud of Agent. — In *Schultz et al.* v. *McLean et al.*, 28 Pac. Rep. 1053 (California), the plaintiffs were owners of a tract of land on which there was a mortgage for about half its value. The mortgagee had obtained a decree of foreclosure and was about to sell the land in satisfaction of the same. To avoid this the plaintiffs, upon the representations of one Robinson, an attorney, that he could procure money on the land by loan, sufficient to avert the sale, from a certain person (McLean) who would deal only with him (Robinson), placed the title to the land in Robinson's hands to use in effecting the proposed loan, directing him to deliver the deed to McLean to hold subject to the terms of an agreement for the loan which Robinson professed to have in his possession. The facts were that McLean had never entered into any such agreement, and understood that he took with the deed a perfect title to the land as held by plaintiffs. This action was brought upon defendants' taking possession and asserting title, to rescind the deed on the ground of fraud. The court held, one justice dissenting, that as both parties to the transaction were innocent, and the fraud had been practiced by the agent of the grantor, the relief prayed for would not be granted. The Court says: "In this case plaintiffs and defendants were both innocent. Neither knew that the fraud was being practiced, but if that fraud